

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA, *et al.*,
ex rel. JOSEPH NOCIE,

Plaintiffs,

No. 18-cv-11160-WGY

V.

STEWART HEALTH CARE SYSTEM, LLC,
et al.

Defendants.

PLAINTIFF-RELATOR'S MOTION FOR VOLUNTARY DISMISSAL
WITHOUT PREJUDICE OF THE DECLINED CLAIMS

1. Plaintiff-Relator, Joseph Nocie, hereby moves to voluntarily dismiss without prejudice to the United States, the Commonwealth of Massachusetts and to Plaintiff-Relator, Plaintiff-Relator's Amended Complaint (ECF No. 66) (the "Relator Action") in the above-captioned case, including all claims asserted therein (the "Declined Claims").

2. By way of background, on June 1, 2018, Relator filed an Original Complaint under seal on behalf of the United States and the Commonwealth of Massachusetts (“Massachusetts”) against Defendants alleging violations of the federal False Claims Act (“FCA”) and the Massachusetts False Claims Act (“Massachusetts FCA”).

3. On September 5, 2023, the United States filed a Notice of its Election to Intervene in Part and Decline in Part. (ECF No. 47). Specifically, the United States intervened as to the allegations against one physician, as set forth in Counts 1 and 2 of Relator's Original Complaint, and declined to intervene with respect to all other allegations and Counts.

4. However, the United States recognized that pursuant to 31 U.S.C. § 3730(b)(1), Plaintiff-Relator may litigate on his own the declined portion of the action in the name of the United States. (ECF No. 47). Further, Massachusetts declined to intervene in this action. However, under Mass. Gen. Laws c. 12, § 5C(2), Plaintiff-Relator is permitted to maintain the action in the name of the Commonwealth.

5. On December 16, 2023, the United States filed its Complaint-In-Intervention (the “Complaint-In-Intervention”) alleging that Defendants knowingly entered into multiple, successive compensation arrangements with one physician that violated the Stark Law, 42 U.S.C. § 1395nn. (ECF No. 52). The Complaint-In-Intervention includes four Counts: two Counts as to violations of the FCA, one count as to unjust enrichment and one count of payment by mistake (the “Complaint-In-Intervention Claims”).

6. On January 19, 2024, Plaintiff-Relator filed the Relator Action asserting the Declined Claims: that Defendants have knowingly overbilled Medicare and MassHealth for certain evaluation and management services in violation of the FCA and the Massachusetts FCA. (ECF No. 63).

7. On March 11, 2024, Plaintiff-Relator and Defendants entered into a Tolling Agreement that provides for a tolling period from the date of the filing of an order of dismissal without prejudice as to the Relator’s Action, including all Declined Claims, until the date that the Intervention Action Claims are resolved by the District Court.

8. Subject to the Tolling Agreement, Plaintiff-Relator now seeks to voluntarily dismiss without prejudice to the United States, Massachusetts and to Plaintiff-Relator, the Relator Action, including all Declined Claims.

9. Pursuant to the FCA, 31 U.S.C. § 3730(b)(1), Relator may only dismiss “if the Court and the Attorney General give written consent to the dismissal and their reasons for consenting.”

10. Accordingly, the United States has indicated to Plaintiff-Relator’s counsel that it intends to file a written consent to this Motion for Voluntary Dismissal Without Prejudice of the Declined Claims.

11. Massachusetts has indicated in writing to the undersigned counsel that it consents to this Motion for Voluntary Dismissal Without Prejudice of the Declined Claims.

12. A proposed Order accompanies this Motion.

Dated: March 11, 2024

Respectfully submitted,

By: /s/ Joy P. Clairmont

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Counsel for Plaintiff-Relator

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants on March 11, 2024.

/s/ Joy P. Clairmont